IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 56 of 2003 (M/B)

Kanwal Kumar S/o Gurditta Mal,
R/o Arya Nagar, Ganga Puri,
Jwalapur, Haridwar. …….. Petitioner

Versus

1. State of Uttaranchal
   Through Collector,
   Haridwar.
2. Assistant Labour Commissioner,
   Haridwar.
3. Assistant Sub-Divisional Magistrate,
   Roorkee, District Haridwar ……. Respondents

Mr. Arvind Vashistha, Advocate for the petitioner.
Mr. N.C. Gupta, Standing Counsel for the respondents.

JUDGMENT

Coram: Hon. Rajeev Gutpa, C.J.
Hon. Prafulla C. Pant, J.

RAJEEV GUPTA, C.J. (Oral)

Mr. Arvind Vashistha, the learned counsel for the petitioner.

Mr. N.C. Gupta, the learned Standing Counsel for the respondents.

They are heard.

2. The petitioner, proprietor of M/s Ganga Brick Kiln, has filed this writ petition for the following reliefs:

> "1. A writ order or direction in the nature of Certiorari quashing the order dated 19.12.02 passed by Assistant Labour Commissioner.
>
> 2. A writ order or direction in the nature of Mandamus commanding the Assistant Labour Commissioner to decide the case afresh after determination of the Age of alleged child labors.
>
> 3. A writ order or direction in the nature of Mandamus commanding the Respondents not to proceed with the recovery of the compensation as ordered by Assistant Labour Commissioner on 19.12.02.

4. Any other writ order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

5. Award cost of the petition."

3. The petitioner is aggrieved of the impugned order (Annexure 6) dated 19.12.02 whereby the Assistant Labour Commissioner Devpura, Haridwar, following the directions contained in the judgment of the Apex Court in the case of M.C. Mehta Vs. State of Tamil Nadu reported in A.I.R. 1977 SC 699, directed the petitioner to pay compensation of Rs. 60,000/- (Rs. 20,000/- each for the three child labours found working in the petitioner's brick kiln).

4. The matter relates to the employment of the child labour by the petitioner in his brick kiln in violation of the provisions of the Child Labour (Prohibition and Regulation) Act, 1986.

5. On an inspection by the Additional Sub- Divisional Magistrate, Roorkee at 6 a.m. on 27th of April 2002, three child labours were found working in the petitioner's brick kiln. A notice was issued to the petitioner to show cause as to why he should not be directed to pay compensation of Rs. 20,000/- for the each child Labour following the Apex Court's direction in the case of M.C. Mehta.

6. The petitioner in his reply to the show cause notice challenged the jurisdiction of the Additional Sub Divisional Magistrate to inspect the petitioner's brick kiln and even the presence of those three children as child labour at the brick kiln was disputed.

7. The Assistant Labour Commissioner did not find any substance in the petitioner's objections and passed the impugned order.

8. Sri Vashistha the learned counsel for the petitioner, challenged the impugned order on the following grounds:

(i) that Additional Sub-Divisional Magistrate was not authorized under Section 17 of the Act to inspect the petitioner's brick kiln.

(ii) That the petitioner cannot be directed to pay compensation without his trial and conviction under the provisions of the Act;

(iii) That, in fact, no child labour was found in the brick kiln;

(iv) That the inspection by the Additional Sub-Divisional Magistrate at 6 a.m. was not during the working hours of the brick kiln.

9. The State of Government by its Order No. 1622/- Udyogic Vikas dated 23.072001 has declared all the "Sub-Divisional Magistrates" as inspector under Section 17 of the Act. As the above notification authorizes "all the Sub-Divisional Magistrates", we have no manner of doubt that "all Sub-Divisional Magistrates," would include "all the Additional Sub-Divisional Magistrates" also. We, therefore, do not find any substance in the petitioner's objection that the above Government Order authorises only the "Sub Divisional Magistrates" and not "Additional Sub-Divisional Magistrates." The Assistant Labour Commissioner, therefore, rightly rejected the petitioner's objection in that behalf.

10. As the direction to the petitioner to pay compensation is based on the direction issued by the Apex Court in the case of M.C. Mehta, the petitioner's submission that in the absence of the petitioner's trial and conviction under the Act, he cannot be directed to pay the compensation, deserves outright rejection as the direction to the employer to pay compensation, following the decision of the Apex Court in the case of M.C. Mehta, is in addition to the employer's liability under the Act. The petitioner's submission in that behalf is liable to be rejected and is hereby rejected.

11. So far as the petitioner's denial to the presence of the three child labours at the brick kiln at the relevant time is concerned, we do

not find and material to take a different view than the one taken by the Assistant Labour Commissioner which was based on the material available including the enquiry report of the Additional Sub-Divisional Magistrate. From the impugned order, we further gather that the process at the brick kiln used to commence at 6 a.m. Therefore, we do not find anything wrong in the inspection by the Additional Sub-Divisional Magistrate at 6 a.m.

12. For the foregoing reasons, we do not find any substance in any of the submissions made on behalf of the petitioner. The petition, therefore, is liable to be dismissed and is hereby dismissed summarily.

13. Consequently, the interim order dated 17.02.2003 stands vacated automatically.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**
16.05.2006 **16.5.2006**

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